


PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number Q86739	
Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450	Application Number	Filed	
	10/532,961	April 27, 2005	
	First Named Inventor		
	Pascal BRUNA		
	Art Unit	Examiner	
	3771	Kristen Clarette MATTER	
<p style="text-align: center;">WASHINGTON OFFICE 23373 CUSTOMER NUMBER</p>			
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reasons(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p><input checked="" type="checkbox"/> I am an attorney or agent of record.</p> <p>Registration number <u>43,078</u></p> <div style="text-align: right;">  _____ Signature </div> <div style="text-align: right;"> _____ Raja N. Saliba Typed or printed name </div> <div style="text-align: right;"> _____ (202) 293-7060 Telephone number </div> <div style="text-align: right;"> _____ April 21, 2009 Date </div>			

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Docket No: Q86739

Pascal BRUNA

Appln. No.: 10/532,961

Group Art Unit: 3771

Confirmation No.: 9115

Examiner: Kristen Clarette MATTER

Filed: April 27, 2005

For: FLUID DISPENSER DEVICE WITH A DOSE INDICATOR

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated November 21, 2008, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

I. Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1-3 and 6-22, all the claims pending in the current application, are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Walker et al. (US 5,564,414) in view of Barberi et al. (US 6,327,017), and further in view of Liou (US 5,895,159).¹ In rejecting claims 1-3 and 6-22 under Walker, Barberi, and Liou, the grounds of rejection state:

Furthermore, the modified Walker et al. reference does not disclose that the energy to change the display is created by the

¹ Claims 1-3 and 5-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of co-pending Application No. 10/532,073.

contacting portions of the switch to create the energy while the device is being actuated and that no battery is required to operate the device. However, Liou discloses a current producer (60) that produces an instantaneous current upon a pressing bar (31) striking an internal flint (column 2, lines 47-53) in order to avoid the use of an external power source (column 1, lines 45-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have replaced the battery and switch mechanism of the modified Walker et al. device with a pressing bar and flint current producer as taught by Liou in order to produce the electric pulse needed to change the LCD display without the need for an external power supply (i.e., by replacing the “striking bar” and “contacting portion” of Walker et al. seen in Figure 3B with the pressing bar and flint of Liou, respectively).

(Office Action at pages 3-4.)

Independent claim 1 recites, *inter alia*: “said display means (20) including a permanent display member (21) that does not require any energy in order to keep the display unchanged, and that requires only a small amount of energy in order to change said display; and wherein said indicator operates without a battery; and the energy required to change the display is created while the device is being actuated during actuation of the fluid dispenser member.” Independent claim 13 recites similar features.

Applicants respectfully disagree. First, there would be no reason to combine the references as indicated by the Examiner, and second, for the sake of argument, even if one were to combine the references, it still would not produce all of the claimed features.

A. There is no rationale to combine the references as indicated by the Examiner.

Applicant notes that “impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.” MPEP § 2142. In the current case, the Examiner concedes that none of the applied three patents disclose all of the

features of independent claims 1 or 13. Instead, the Examiner relies on a combination of three patents to piece together the claimed subject matter. There is nothing in the prior art, however, to provide a reasonable rationale as to why it would be obvious to a person of ordinary skill to combine Walker, Barberi, and Liou.

Walker discloses a Metered Dose Inhaler (MDI) with an electronic counter. This counter uses a conventional LCD display powered by a battery. (See for example Walker, col. 8, line 51 to col. 9, line 10.) The counter is actuated by closing an electronic microswitch connected to the battery. The closing of the microswitch is provided by contact: as long as contact is maintained, the switch and the electrical circuit are closed. When contact is removed, the switch and the electrical circuit are opened again. (See Walker col. 7, lines 36-52).

Barberi discloses bistable LCD devices having monostable anchorings. Electrical fields defined between electrodes are used to operate these devices. Barberi mentions that the display screens are used in portable devices, like mobile telephones, electronic organizers or diaries, as well as video applications. All these applications clearly require complex screens with multiple information display and require electrical power or energy to operate. Barberi explicitly states that in the above noted devices, the screen must be refreshed as infrequently as possible in order to preserve the power, indicating that the LCD of Barberi was attached to a power source such as a battery. (col. 19, l. 50-54).

Liou, on the other hand, discloses a heat-melting glue gun having a current-producer that creates a short-circuit spark to ignite gas jetting from a nozzle. (Liou, col. 2, lines 47-60.) The spark is created by striking a flint with a pressing bar, thus producing instantaneous electric current which is then directed towards electrodes provided near the nozzle. (See Liou, col. 2,

lines 47-60.) Thus, Liou only indicates that the current producer is capable of igniting gas from a nozzle, which is entirely different than powering an LCD display. As such, it would not have been obvious to one of ordinary skill in the art to combine Liou with either Walker or Barberi.

In Walker, a switch is closed by closing an electric circuit powered by a battery. Even when considering the non-obvious combination of Walker and Barberi, these references would disclose to one skilled in the art that it is necessary to provide an electric power supply to power the LCD screen. By comparison, in Liou, a spark is created by an impact of one element on another to ignite a gas to produce a flame. Nothing would indicate to one skilled in the art that the current producer in Liou would be suitable to power an LCD screen. Further, nothing in Walker indicates that the electric power supply is inadequate or should be replaced. Thus, there would be no motivation to combine Walker, Barberi and Liou.

B. Even if the references are improperly combined, this still would not produce all of the recited features of independent claims 1 and 13.

The Examiner indicated that “Liou was cited merely to show that electrical pulses can be created without a battery by mechanical striking. . . . By replacing the contact portions of Walker with a pressing bar and flint piece as taught by Liou, the electrical pulse needed to change the display would in fact be created when a user presses down on the reservoir to dispense a metered dose of medicament.” (Office Action at page 6.)

Claim 1, however, recites “the energy required to change the display is created while the device is being actuated during actuation of the fluid dispenser member;” and claim 13 recites “wherein the electrical energy required to change the display is generated during actuation of the fluid dispenser member by interaction between two physical portions of the device moving

relative to each other.” Neither Walker nor Liou disclose a device where the energy is created or generated during actuation of the device.

As noted above, the energy for the LCD in Walker is stored in a battery, and the actuation of the device in Walker merely closes a circuit to supply current from the battery. The actuation of the device in Walker, however, does not create or generate the energy used to power the LCD.

Liou discloses a trigger of the glue feeding means 50 and a pressing bar 31 of the current producer 60 as separate elements. Thus, in Liou, there is a specific energy creating system that is separate from the glue dispensing system. The user would have to provide two different actions: pressing the bar to create a spark to ignite the gas, and pressing the trigger to feed the glue.

Accordingly, even if, for the sake of argument, one were to combine Walker with Barberi and Liou, the result would be the Walker device having a current-producer as described in Liou, requiring a separate actuation to create the energy.

II. Conclusion

For the reasons presented above, Applicant respectfully requests the Panel to reverse the final rejection and allow the application with the pending claims.

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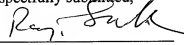
WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: April 21, 2009

Respectfully submitted,



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